

**REMARKS**

Claims 1-20 are currently pending in the application. By this amendment, claims 1 and 15 are amended for the Examiner's consideration. The above amendments do not add new matter to the application and are fully supported by the specification and figures. Reconsideration of the rejected claims in view of the above amendments and the following remarks is respectfully requested.

***Allowed Claims***

Applicant appreciates the indication that claims 12, 13, 17, 19 and 20 are allowed. Furthermore, Applicant submits that all of the pending claims are in condition for allowance for the following reasons.

***35 U.S.C. §112, 1<sup>st</sup> Paragraph, Rejection***

Claims 1-11, 14-16 and 18 were rejected under 35 U.S.C. §112, 1<sup>st</sup> paragraph. This rejection is believed to be improper.

The Examiner asserts that there is no support in the written description for the drive wheel being front wheels. Applicant respectfully disagrees.

Nevertheless, Applicant has amended claims 1 and 15 in a manner which is literally supported by Fig. 1. As the Examiner will note from Fig. 1, the drive wheels 40 are clearly shown in front of the seat back of the seat system 60 and the castors 1, 1a are arranged behind the two driven wheels 40.

Furthermore, Applicant reminds the Examiner that an evaluation of whether the claims find support in the written description does not occur in a vacuum. As the

Examiner well knows, every wheelchair has front and rear wheels. One having ordinary skill in the art, having reviewed the instant application, would clearly understand that the device shown in Fig. 1 is a wheelchair with rear wheels 1, 1a and front wheels 40. In addition to other features shown in Fig. 1, the disclosed wheelchair has a seat system 60 which faces the front of the wheelchair. This cannot reasonably be disputed.

It is also apparent from a fair reading of the disclosure of the instant application that the wheelchair moves in a forward direction based on the configuration of the seat. Again, this cannot seriously be disputed. The fact that the specification does not specifically mention that the wheels 40 are front wheels does *per se* mean that there is no support for these wheels being front wheels. The fact that the wheels 40 are front wheels is both inherent and self-evident, especially in view of the seat orientation.

Applicant reminds the Examiner that "the failure of the specification to specifically mention a limitation that later appears in the claims is not a fatal one when one skilled in the art would recognize upon reading the specification that the new language reflects what the specification shows has been invented." See *All Dental Prodx, LLC v. Advantage Dental Products, Inc.*, 309 F.3d 774 (Fed. Cir. 2002) noting *Eiselstein v. Frank*, 52 F.3d 1035, 1039, 34 USPQ2d 1467, 1470 (Fed. Cir. 1995). A copy of the *All Dental Prodx* case has been previously made of record. In this case, Applicant submits that not only are front wheels inherently disclosed in the drawings and specification, one having ordinary skill in the art would readily recognize all of the features of the claimed invention in view of the disclosure of the instant application.

***35 U.S.C. §112, 2<sup>nd</sup> Paragraph, Rejection***

Claims 1-11, 14-16 and 18 were rejected under 35 U.S.C. §112, 2<sup>nd</sup> paragraph.

This rejection is believed to be moot.

In rejecting claims 1 and 15, the Examiner apparently asserts that because there is no support in the written description for the drive wheel being front wheels, claims 1 and 15 are indefinite. Applicant respectfully disagrees. As explained above, one having ordinary skill in the art, having read the specification and reviewed the drawings, would clearly understand that the drive wheel are front wheels and the Examiner has not demonstrated otherwise. As explained above, every wheelchair has front and rear wheels. One having ordinary skill in the art, having reviewed the instant application, would clearly understand that the device shown in Fig. 1 is a wheelchair with rear wheels 1, 1a and front wheels 40. In addition to other features shown in Fig. 1, the disclosed wheelchair has a seat 60 which faces the front of the wheelchair. This cannot reasonably be disputed. The fact that the specification does not specifically mention that the wheels 40 are front wheels does *per se* mean that there is no support for these wheels being front wheels. The fact that the wheels 40 are front wheels is both inherent and self-evident.

On the other hand, in an effort to advance prosecution, Applicant has amended claims 1 and 15 in a manner which is literally supported by Fig. 1. As the Examiner will note from Fig. 1, the drive wheels 40 are clearly shown in front of the seat back of the seat system 60.

Accordingly, Applicant respectfully requests that the above-noted rejection of claims 1-11, 14-16 and 18 be withdrawn.

***35 U.S.C. §103 Rejections*****Over Korber with Lee**

Claims 1-9, 15, 16 and 18 were rejected under 35 U.S.C. §103(a) for being unpatentable over U.S. Patent No. 4,953,645 to KÖRBER in view of U.S. Patent No. 6,302,421 to LEE. This rejection is respectfully traversed.

While acknowledging that KÖRBER fails to disclose that the connection between the fork and the steering linkage is releasable by actuation of a bolt which is subject to a load by a spring (claim 1) and a recess arranged on a circumference of the fork pin which is engageable with a bolt to releasably connect the fork to the steering linkage (claim 15), the Examiner nevertheless asserts that LEE teaches these features and that it would have been obvious to combine the teachings of these documents. Applicant respectfully disagrees.

LEE does not cure the acknowledged deficiencies of KÖRBER. LEE discloses an operator driven vehicle which can also be pushed by another person other than the driver (see Fig. 1A) and that can be driven by "motorized power" (see col. 8, lines 31-33). However, it is clear from the figures that the disclosed vehicle uses driven rear wheels and castor wheels on the front of the vehicle (see Fig. 1A). Furthermore, the system 32/12D of LEE merely locks the front castor wheels 14 in the straight position and, unlike the instant invention, does not act to release or connect the steering linkage to the fork of the castor wheel.

As LEE teaches to use a castor locking system for front steerable castors and does not act to connect or disconnect the steering linkage from the fork, LEE cannot serve to provide the requisite motivation for modifying the rear castors of KÖRBER to

include a connection between the fork and the steering linkage that is releasable by actuation of a bolt which is subject to a load by a spring (claim 1) and a recess arranged on a circumference of the fork pin which is engageable with a bolt to releasably connect the fork to the steering linkage (claim 15).

Applicant submits that the Examiner has neglected to set forth any proper basis for combining the teachings of the applied documents. In establishing a *prima facie* case of obviousness under 35 U.S.C. § 103, it is incumbent upon the Examiner to provide a reason *why* one of ordinary skill in the art would have found it obvious to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See *Ex parte Clapp*, 227 USPQ 972 (B.P.A.I. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from Applicant's disclosure. See, for example, *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988). As noted above, each of the applied documents is silent with regard to a number of recited features and each of the document relate to wheelchairs which function in different manners. Moreover, none of the documents teach or suggests modifying the structure or operation of KÖRBER in the manner asserted by the Examiner.

Because the art of record fails to provide any reasonable explanation why one ordinarily skilled in the art would utilize such an arrangement, and/or fails to disclose or suggest the problems that such an arrangement would address, Applicant submits that the art of record fails to provide the requisite motivation or rationale as to *why* one ordinarily skilled in the art would modify KÖRBER in the manner asserted by the

Examiner. That is, Applicant submits that because the Examiner has not set forth an articulable reason found in the art of record for modifying KÖRBER in the manner asserted by the Examiner, the instant rejection has no basis in the art of record, such that the rejection is improper and should be withdrawn.

Rejections based on 35 U.S.C. § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The Examiner has the initial duty of supplying the factual basis for the rejection and may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis. See *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967). As stated in *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-313 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984):

[t]o imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.

Applicant submits that the only reason to combine the teachings of the applied references in the manner proposed by the Examiner is the result of a review of Applicant's disclosure and the application impermissible hindsight.

Thus, Applicant submits that claims 1 and 15, as well as claims 2-9, 16 and 18 which depend from claims 1 and 15, are not disclosed, or even suggested, by the combination of KÖRBER and LEE.

Accordingly, Applicant respectfully requests that the rejection of the above-noted claims be withdrawn.

Over Korber with Lee and Kovacs

Claims 10, 11 and 14 were rejected under 35 U.S.C. §103(a) for being unpatentable over KÖRBER in view of LEE and further in view of U.S. Patent No. 5,170,529 to KOVACS. This rejection is respectfully traversed.

While acknowledging that KÖRBER and LEE fails to disclose that the features recited in these dependent claims, the Examiner nevertheless asserts that KOVACS teaches these features and that it would have been obvious to combine the teachings of these documents. Applicant respectfully disagrees.

KOVACS does not cure the acknowledged deficiencies of KÖRBER and LEE. KOVACS relates to a foot operable cart with a wheel lock. In addition to failing to disclose or suggest a wheelchair, KOVACS fails to disclose any driven wheels, much less, driven front wheels.

As KOVACS does not disclose an arrangement which can act to connect or disconnect the steering linkage from the fork, KOVACS cannot serve to provide the requisite motivation for modifying KÖRBER and LEE to include a connection between the fork and the steering linkage is releasable by actuation of a bolt which is subject to a load by a spring (claim 1). Furthermore, because claims 10, 11 and 14 depend from claim 1, these claims are allowable at least because they depend from claim 1.

Thus, Applicant submits that claim 1, as well as claims 10, 11 and 14 which depend from claim 1, are not disclosed, or even suggested, by the combination of KÖRBER, LEE and KOVACS.

Accordingly, Applicant respectfully requests that the rejection of the above-noted claims be withdrawn.

***Comments on Reasons for Allowance***

In response to the Statement of Reasons for Allowance set forth in the Office Action, Applicant wishes to clarify the record with respect to the basis for the patentability of the indicated claims in the present application. In this regard, while Applicant does not disagree with the Examiner's indication that certain identified features are not disclosed by the references, Applicant submits that the allowed claims in the present application recite a combination of features, and that the basis for patentability of these claims is based on the totality of the recited features.

**CONCLUSION**

In view of the foregoing amendments and remarks, Applicant submits that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Please charge any deficiencies in fees and credit any overpayment of fees to Deposit Account No. 19-0089.

Respectfully submitted,

Thomas Brendel



Andrew M. Calderon  
Registration No. 38,093

October 20, 2006  
Greenblum & Bernstein, P.L.C.  
1950 Roland Clarke Place  
Reston, Virginia 20191  
Telephone: 703-716-1191  
Facsimile: 703-716-1180